

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LOYDALE KIRVEN,

Plaintiff,

vs.

No. CIV 06-1212 JB/WDS

CURRY COUNTY DETENTION CENTER,
WARDEN JOHNSON,
CHRIS SENA, et al, in their individual
and official capacity,

Defendants.

ORDER

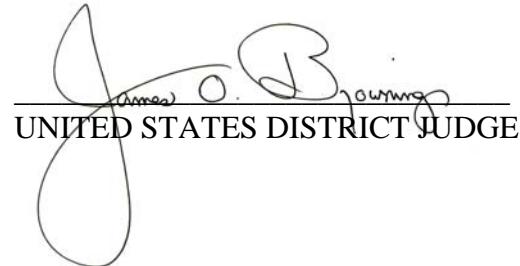
THIS MATTER comes before the Court on: (i) the Defendants' Motion for Summary Judgment, filed June 2, 2006, (Doc. 38); and (ii) the Defendants' Martinez Report, filed March 20, 2008 (Doc. 35). Having reviewed the record de novo and considered the United States Magistrate Judge's Proposed Findings and Recommended Disposition, filed October 23, 2008 (Doc. 50), and Plaintiff Loydale Kirven's objections thereto, and being otherwise fully advised, the Court finds that the Motion for Summary Judgment should be granted. In his objection, Kirven states that he followed all administrative remedies by filing a grievance, as set forth in Doc. 6. The Court has reviewed Doc. 6 carefully, and concludes that Doc. 6 contains no indication that Kirven filed the requisite grievance and accordingly exhausted his administrative remedies.

Kirven suggests that the Court did not have this document. The Court has the document, but does not believe it has the effect that Kirven believes it to have. Specifically, the Court does not view the document as containing or memorializing any attempt by Kirven to exhaust his administrative remedies.

Kirven states that he has not been allowed a copy of the grievance. Doc. 6 is on file in this case, so he now has a copy of what he appears to believe to be his grievance.

Finally, Kirven asks that the record be supplemented with his medical report, CCDC request forms, "and others" within thirty days. See Objection to Disposition at 1, filed October 31, 2008 (Doc. 51). He indicates that these documents concern his injury because of the tasing. Because these documents appear to go to the merits of his case rather than to the exhaustion issue, the Court will allow him to supplement the record, but will not delay further its ruling in this matter.

IT IS ORDERED that: (i) the Magistrate Judge's Proposed Findings and Recommended Disposition are adopted; and (ii) the Defendants' Motion for Summary Judgment (Doc. 38) is granted.



UNITED STATES DISTRICT JUDGE

Parties and Counsel:

Loydale Kirven
Guadalupe County Correctional Facility
Santa Rosa, New Mexico

Plaintiff Pro Se

Jonlyn M Martinez
Albuquerque, New Mexico

Attorney for the Defendant